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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/517,934

08/22/2005

Shail Patel

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EXAMINER

NGUYEN, STEVEN H D

ART UNIT

PAPER NUMBER

2419

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/517,934	<b>Applicant(s)</b> PATEL, SHAIL	
	<b>Examiner</b> Steven HD Nguyen	<b>Art Unit</b> 2419	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/28/05</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Drawings***

1. The subject matter of this application admits of illustration by a drawing to facilitate understanding of the invention. Applicant is required to furnish a drawing under 37 CFR 1.81(c). No new matter may be introduced in the required drawing. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d).

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “means” must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will

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be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 7-9 provides for the use of a method of improving interaction between a user and a service provider, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 7-9 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

***Claim Rejections - 35 USC § 101***

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

6. Claims 7-9 are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory “process” under 35 U.S.C. 101 must (1) be tied to another statutory

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category (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or material) to a different state or thing (Reference the May 15, 2008 memorandum issued by Deputy Commissioner for Patent Examining Policy, John J. Love, titled "Clarification of 'Processes' under 35 U.S.C. 101"). The instant claims neither transform underlying subject matter nor positively tie to another statutory category that accomplishes the claimed method steps, and therefore do not qualify as a statutory process.

7. Claims 1-6 are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a system which includes means for collecting and updating the data which does not include any physical elements. Therefore, the claims are just a software per se which is not tie to another statutory category (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or material) to a different state or thing. The instant claims neither transform underlying subject matter nor positively tie to another statutory category that accomplishes a system, and therefore do not qualify for one of the four statutory categories because the claims is just collecting and updating the data.

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-9 rejected under 35 U.S.C. 103(a) as being unpatentable over Dejaeger (US 6456981) view of Von Kohorn (US 20010003099).

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As claims 1, 7 and 9, Dejaeger discloses an electronic system for interaction between a specific user and a service provider comprising (a) receipt means for obtaining information from the user for establishing a user profile of said user (Fig 5, Ref 106 discloses a user entered information in order to create user profile); (b) control means for the service provider for providing and displaying one or more system responses to the input provided under (a) (Fig 5 discloses a user profile is used to display the responses for example The user profile may then be used to generate a customized advertizing message in the form of a video message which is displayed on the marketing portion of the terminal, see col. 8, lines 26-35); means for initializing one or more business rules for each type of system response, said business rules specifying the match between the system response and the related user profile and also the desired outcome in terms of actions to be taken by the user (Col. 9, lines 24-27, business rule is similar to criteria which is used to display the survey that matching between user profile and advertizement); (d) means for selecting the most appropriate business rule for the user, based on the input given under (a) (Col. 9, lines 24-27, a criteria is selected based on user profiled which is entered) and (e) means for observing the behavior of the user (Fig 5, Ref 146 and 148 discloses the habits of the user during the shopping by recording the retail information of the user). However, Dejaeger fails to disclose (f) feedback means for updating the business rules based on the difference between the desired outcome and the actual behavior by the user. In the same field of endeavor, Von Kohorn discloses (b) control means for the service provider for providing and displaying one or more system responses to the input provided under (a) (Page 2, Sec [15] displaying a question based on user response such as at a receiving station the electronic equipment includes a response unit having a keyboard by which a viewer of the broadcast program enters a response.

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The response should be a desirable or correct response, or at least an acceptable response in order to receive credit or point. The response is stored in a buffer store for comparison with a correct or acceptable response which is stored in a data memory); means for initializing one or more business rules for each type of system response, said business rules specifying the match between the system response and the related user profile and also the desired outcome in terms of actions to be taken by the user (Page 26, Sec 268, scoring criteria such as point or credit); (d) means for selecting the most appropriate business rule for the user, based on the input given under (a) (Page 26, Sec 268, the user selected home study course, the scoring criteria for the course will be selected); (e) means for observing the behavior of the user (Page 26, Sec 268, Student informs the host that the questions relate to material not yet fully covered in the course); and (f) feedback means for updating the business rules based on the difference between the desired outcome and the actual behavior by the user such the updated business rule is analyzed for gaining information on changes in user behavior (Page 26, Sec 268, The host modifies the possible responses, alters the mode of scoring to provide a different distribution of score points for various key words and phrases. Further alteration in the mode of scoring can be accomplished by the host. The difficulty levels stored in the memory may also be altered or reformatted by the host so as to provide a curving of the score distribution to give extra point or credit to user, the system comparing the behavior of user and desired behavior "complain and no complain" in order to adjust the core or credit "rule").

Since, Dejaeger suggest a method and system for monitoring the behavior of a user when he answers the survey in order to update his profile. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to apply a method and

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system for altering the scoring criteria when comparing the behavior of the user and the required behavior as disclosed by Von KoHorn into the teaching of Dejaeger. The motivation would have been to improve advertiser system and reduce the advertisement cost.

As claim 2, Dejaeger discloses the user profile mentioned under (a) comprises information about said user selected from the group consisting of purchase behavior, demographics, habits, attitudes, needs, preferences, certainty factor, psycho-graphics, linguo-graphics, diagnostics and combinations thereof (Col 7, lines 6-15, the retail information included in a given user profile may be sorted to determine the frequency in which a customer buys certain items such as snacks or beer. Hence, it should be appreciated that the retail information included in the user profiles of the database).

As claim 3, Dejaeger discloses the system responses mentioned under (b) are selected from the group consisting of providing information content, offering a marketing lever, asking questions, and combinations thereof (Fig 5, ask questions, Fig 7, Ref 134, offers voucher).

As claim 4, Dejaeger discloses the marketing lever is selected from the group consisting of a product promotion, a free sample, a free service and combinations thereof (Col. 7, lines 23-43).

As claim 5, Dejaeger discloses the desired outcome specified in each business rule includes one or more actions by the user selected from reading of information, taking up of promotions and answering of questions.

As claim 6, Dejaeger discloses being an computer system or a telecommunication system (Figs 2-3).



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As claim 8, Dejaeger discloses the observed behaviour by the user is used to update the user profile (Fig 5, Ref 146 and 148).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven HD Nguyen whose telephone number is (571)272-3159. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jayanti Patel can be reached on (571) 272-2988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steven HD Nguyen/  
Primary Examiner, Art Unit 2419